

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ELIJAH LEE MILLER,

Plaintiff,

v.

J. THOMAS, et al.,

Defendants.

No. 2:22-cv-0087 KJN P

ORDER

Plaintiff is a state prisoner, proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis is granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff is obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the

1 amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.  
2 § 1915(b)(2).

### 3 Screening Standards

4 The court is required to screen complaints brought by prisoners seeking relief against a  
5 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
6 court must dismiss a complaint or portion thereof if the prisoner raised claims that are legally  
7 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek  
8 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

9 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
11 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an  
12 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
13 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
14 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
15 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.  
16 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably  
17 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at  
18 1227.

19 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain  
20 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the  
21 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic  
22 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
23 In order to survive dismissal for failure to state a claim, a complaint must contain more than "a  
24 formulaic recitation of the elements of a cause of action;" it must contain factual allegations  
25 sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550 U.S. at 555.  
26 However, "[s]pecific facts are not necessary; the statement [of facts] need only 'give the  
27 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Erickson v.  
28 Pardus, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal

quotations marks omitted). In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Erickson, 551 U.S. at 93, and construe the pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

#### The Civil Rights Act

To prevail on a claim under § 1983, a plaintiff must demonstrate: (1) the violation of a federal constitutional or statutory right; and (2) that the violation was committed by a person acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). An individual defendant is not liable on a civil rights claim unless the facts establish the defendant's personal involvement in the constitutional deprivation or a causal connection between the defendant's wrongful conduct and the alleged constitutional deprivation. See Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989); Johnson v. Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978). That is, plaintiff may not sue any official on the theory that the official is liable for the unconstitutional conduct of his or her subordinates. Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). The requisite causal connection between a supervisor's wrongful conduct and the violation of the prisoner's constitutional rights can be established in a number of ways, including by demonstrating that a supervisor's own culpable action or inaction in the training, supervision, or control of his subordinates was a cause of plaintiff's injury. Starr v. Baca, 652 F.3d 1202, 1208 (9th Cir. 2011).

#### Plaintiff's Complaint

In his first cause of action, plaintiff claims he received inadequate medical care from March 20, 2020, to January 2022 for his severe abdominal, back, and leg pain, and lost his cane. In his second cause of action, plaintiff claims he was falsely convicted. In his third cause of action, plaintiff again alleges he received inadequate medical care from July to November 4, 2022. Plaintiff states that S. Gates sided with medical personnel (such as Halie Bethlehem and the California Health Care Facility dietician) for the I-3 ad seg dietician's refusal to interview plaintiff face to face. (ECF No. 1 at 6.) Plaintiff claims he has been underweight since November of 2019. As relief, plaintiff wants psych tech B. Zarco to lose his state license;

1 plaintiff also appears to seek money damages. (ECF No. 1 at 7.) Plaintiff names as defendants J.  
2 Thomas, Supervising Registered Nurse, California Medical Facility; William Kushner, Chief  
3 Executive Officer, California Medical Facility; S. Gates, Chief, Health Care Correspondence  
4 Appeals Branch; and Health Care Appeals Branch.

5 Discussion

6 First, plaintiff is advised that he cannot sue the Health Care Appeals Branch. The  
7 Eleventh Amendment serves as a jurisdictional bar to suits brought by private parties against a  
8 state or state agency unless the state or the agency consents to such suit. See Quern v. Jordan,  
9 440 U.S. 332 (1979); Alabama v. Pugh, 438 U.S. 781 (1978) (per curiam); Jackson v. Hayakawa,  
10 682 F.2d 1344, 1349-50 (9th Cir. 1982). In the instant case, the State of California has not  
11 consented to suit. Accordingly, plaintiff's claims against the appeals branch are frivolous and  
12 must be dismissed.

13 Second, plaintiff cannot challenge his underlying conviction in a civil rights action. As a  
14 general rule, a claim that challenges the fact or duration of a prisoner's confinement should be  
15 addressed by filing a habeas corpus petition under 28 U.S.C. § 2254, while a claim that  
16 challenges the conditions of confinement should be addressed by filing a civil rights action under  
17 42 U.S.C. § 1983. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); Ramirez v. Galaza, 334  
18 F.3d 850, 858-859 (9th Cir. 2003), cert. denied, 541 U.S. 1063 (2004). Plaintiff cannot obtain  
19 release from prison by filing a § 1983 action. In other words, plaintiff cannot challenge his  
20 underlying conviction in a civil rights action filed under 42 U.S.C. § 1983. Thus, plaintiff's  
21 second cause of action is dismissed without leave to amend.

22 Third, in plaintiff's first cause of action, plaintiff fails to include any charging allegations  
23 as to a specific individual defendant's acts or omissions that plaintiff contends demonstrates a  
24 constitutional violation. In his third cause of action, plaintiff's allegations are insufficient to  
25 demonstrate a named defendant was deliberately indifferent to plaintiff's serious medical needs.  
26 Moreover, plaintiff cannot seek relief against someone who is not named as a defendant.  
27 Consequently, plaintiff's allegations in his first and third causes of action are so vague and  
28 conclusory that the court is unable to determine whether such claims are frivolous or fails to state

1 a claim for relief. The court also determines that plaintiff's allegations do not contain a short and  
2 plain statement as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a  
3 flexible pleading policy, a complaint must give fair notice and state the elements of the claim  
4 plainly and succinctly. Jones v. Cmty. Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984).  
5 Plaintiff must allege with at least some degree of particularity overt acts which defendants  
6 engaged in that support plaintiff's claim. Id. Plaintiff must include charging allegations as to  
7 each named defendant. Because plaintiff failed to comply with the requirements of Fed. R. Civ.  
8 P. 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to file an  
9 amended complaint. Plaintiff is provided the following standards governing potential Eighth  
10 Amendment claims to assist plaintiff in determining whether he can state cognizable claims in an  
11 amended complaint.

#### 12 Eighth Amendment - Medical Care

13 Where a prisoner's Eighth Amendment claims arise in the context of medical care, the  
14 prisoner must allege and prove "acts or omissions sufficiently harmful to evidence deliberate  
15 indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976). An Eighth  
16 Amendment medical claim has two elements: "the seriousness of the prisoner's medical need and  
17 the nature of the defendant's response to that need." McGuckin v. Smith, 974 F.2d 1050, 1059  
18 (9th Cir. 1991), overruled on other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th  
19 Cir. 1997) (*en banc*).

20 A serious medical need exists if the failure to treat the condition could result in further  
21 significant injury or the unnecessary and wanton infliction of pain. Jett v. Penner, 439 F.3d 1091,  
22 1096 (9th Cir. 2006). To act with deliberate indifference, a prison official must both be aware of  
23 facts from which the inference could be drawn that a substantial risk of serious harm exists, and  
24 he must also draw the inference. Farmer v. Brennan, 511 U.S. 825, 837, 114 S. Ct. 1970 (1994).  
25 Thus, a defendant is liable if he knows that plaintiff faces "a substantial risk of serious harm and  
26 disregards that risk by failing to take reasonable measures to abate it." Id. at 847. "It is enough  
27 that the official acted or failed to act despite his knowledge of a substantial risk of harm." Id. at  
28 842.

1 Finally, a claim of medical malpractice or negligence is insufficient to make out a  
 2 violation of the Eighth Amendment. Id. at 1059. A difference of opinion between a prisoner and  
 3 prison medical staff or between medical professionals as to the proper course of medical  
 4 treatment does not give rise to a 1983 claim. Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir.  
 5 2004) (“Mere negligence in diagnosing or treating a medical condition, without more, does not  
 6 violate a prisoner’s Eighth Amendment rights.”); Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir.  
 7 1996).

#### 8 Leave to Amend

9 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions  
 10 about which he complains resulted in a deprivation of plaintiff’s constitutional rights. See, e.g.,  
 11 West v. Atkins, 487 U.S. 42, 48 (1988). Also, the complaint must allege in specific terms how  
 12 each named defendant is involved. Rizzo v. Goode, 423 U.S. 362, 371 (1976). There can be no  
 13 liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a  
 14 defendant’s actions and the claimed deprivation. Rizzo, 423 U.S. at 371; May v. Enomoto, 633  
 15 F.2d 164, 167 (9th Cir. 1980). Furthermore, vague and conclusory allegations of official  
 16 participation in civil rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266,  
 17 268 (9th Cir. 1982).

18 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to  
 19 make plaintiff’s amended complaint complete. Local Rule 220 requires that an amended  
 20 complaint be complete in itself without reference to any prior pleading. This requirement exists  
 21 because, as a general rule, an amended complaint supersedes the original complaint. See Ramirez  
 22 v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) (“an ‘amended complaint  
 23 supersedes the original, the latter being treated thereafter as non-existent.’” (internal citation  
 24 omitted)). Once plaintiff files an amended complaint, the original pleading no longer serves any  
 25 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim  
 26 and the involvement of each defendant must be sufficiently alleged.

27 In accordance with the above, IT IS HEREBY ORDERED that:

- 28 1. Plaintiff’s request for leave to proceed in forma pauperis is granted.

2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.

§ 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the Director of the California Department of Corrections and Rehabilitation filed with this order.

3. Plaintiff's complaint is dismissed.

4. Within thirty days from the date of this order, plaintiff shall complete the attached Notice of Amendment and submit the following documents to the court:


a. The completed Notice of Amendment; and

b. An original of the Amended Complaint.

Plaintiff's amended complaint shall comply with the instant order, the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must also bear the docket number assigned to this case and must be labeled "Amended Complaint."

Failure to file an amended complaint in accordance with this order may result in the dismissal of this action.

Dated: June 3, 2022

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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10 ELIJAH LEE MILLER,

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15

No. 2:22-cv-0087 KJN P

NOTICE OF AMENDMENT

16 Plaintiff hereby submits the following document in compliance with the court's order  
17 filed \_\_\_\_\_.

18 DATED: \_\_\_\_\_

Amended Complaint

19  
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21 \_\_\_\_\_  
22 Plaintiff  
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